

FILED

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Clerk, U.S. District Court
District Of Montana
Billings

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Attorneys for Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

FLAGSTONE DEVELOPMENT, LLC, an Arizona
limited liability company, and LAWRENCE A.
HEATH,

Plaintiffs,

v.

WAYNE JOYNER, JUSTIN JOYNER, as
individuals; and ROCKY MOUNTAIN
TIMBERLANDS, LLC, a Montana corporation,

Defendants.

Cause No. CV-08-100-BLG-SEH

FINAL PRETRIAL ORDER

Pursuant to Fed. Civ. P. 16 and L.R. 16.4, the parties hereby submit this Final Pretrial Order:

I. Nature of the Action

Plaintiff Flagstone Development (“Flagstone”), through its principal Lawrence “Larry” Heath (“Heath”) (collectively “Flagstone/Heath” or “buyer”) entered into a Buy/Sell Agreement with Defendant Rocky Mountain Timberlands, LLC, and its principals Wayne and Justin Joyner (collectively “RMT/Joyner” or “seller”) in May of 2007 to purchase approximately 13,000 acres of real property in Musselshell County. The Seller was contractually obligated to assist Flagstone in subdividing the property so that it could be developed. Flagstone claims to be damaged by RMT’s breach of the contract during a time that they were supposed to be acting as joint developers of the subject property. RMT previously asserted that its conduct was justified because the contract was abandoned. The jury in Phase One of this trial rejected that argument. This trial is to determine whether RMT breached the Buy/Sell Agreement.

II. Jurisdiction and Venue.

The basis for jurisdiction and venue in this District Court is diversity jurisdiction under Title 28, U.S.C. § 1332, because the amount in controversy exceeded \$75,000 and Plaintiffs and Defendants are citizens of different states.

Venue is proper in the Billings Division as the land in question is located in Musselshell County.

III. Jury or Non Jury

Both parties have demanded a jury trial.

IV. Agreed Facts

1. Appellant Flagstone Development ("Flagstone"), through its principal Lawrence "Larry" Heath ("Heath") (collectively "Flagstone/Heath" or "buyer") entered into a Buy/Sell Agreement with defendant Rocky Mountain Timberlands, LLC through its principals Wayne and Justin Joyner (collectively "RMT/Joyner" or "seller") in May of 2007 to purchase approximately 13,000 acres of real property in Musselshell County (the "Transaction").
2. The Parties agree that Exhibit 1 is the Buy/Sell Agreement.
3. American Title & Escrow ("AT&E") was the escrow company selected to close the Transaction and to hold the development funds that Flagstone/Heath was contractually obligated to contribute the co-development.
4. Before the Transaction closed, RMT/Joyner caused the property to be sold to a new buyer Nicolas Powers ("Powers").

V. Elements of Liability

The Court has determined that the only issue to be litigated in this phase of the trial is RMT's liability for breach of contract. The elements of a claim for breach of contract are as follows:

Count 1: Breach of Contract

- 1) Existence of a contract (Exhibit 1)
- 2) Breach of a material term of the contract
- 3) Damages

The existence of a contract is stipulated. This phase of the trial is to determine whether RMT breached a material term of the contract. Plaintiff contends at this phase of the trial that each and all of the actions below constitute breach of the Buy/Sell Agreement:

- Breach of the seller's obligation to put the subject property through subdivision process using the regulations of the State of Montana and Musselshell County in 20+ acre parcels.
- Secretly working to undermine the "mutually determined" subdivision layout as required by the terms of Exhibit 1.
- Breach of the obligation to construct roads by the Seller's in-house contractor in an amount not to exceed \$35,000.00 per mile.

- Failure to provide a 10 day notice to cure under the terms of the contract in lieu of the Notice of Termination (Exhibit 2).
- Interfering with Heath's contractual obligation to obtain financing.
- Secretly selling the Property to Powers while under contract on the same land with Flagstone. Evidence of such sale and concealment included the following
 - o Instructing American Title's Jen Smith to conceal from Flagstone the sale of 30 Mile Ranch to third party Powers, and agreeing to indemnify American Title from damages therefrom;
 - o Justin Joyner and Wayne Marchwick's decision to "give Mr. Heath the impression that all is well and keep him satisfied with limited contact."
 - o Misleading Flagstone into believing that RMT was moving forward with the subdivision application;
 - o Sending a false "Termination Notice" purporting to terminate the Buy/Sell for the failure to pay subdivision filing fees when no such plat application had ever been submitted;
 - o Failing to obtain "Release of the Heath Contract" as required by the Powers Buy Sell Agreement.

VI. Relief Sought

1. A finding of breach of contract by the jury.

VII. Legal Issues

Plaintiff objected to the bifurcation of liability and damages, dismissal of Wayne and Justin Joyner and dismissal of tort claims and reserves all rights associated with those claims as set forth in the Second Amended Complaint and prior briefing.

VIII. Dismissals

For purposes of the trial in this matter, the following parties have been dismissed:

1. Larry Heath;
2. Wayne Joyner;
3. Justin Joyner;
4. Wayne Marchwick;
5. Jennifer Smith;
6. American Title and Escrow, a Montana corporation;
7. First American Title Company, a California corporation;
8. Developer Finance Corporation, a Massachusetts corporation;
9. Nicolas Powers, III, aka Nicholas D. Powers;
10. Jake Korell; Landmark of Billings, Inc., a Montana corporation;
11. Jon Ussin; U Bar S Real Estate, a Montana corporation.

IX. Use of Discovery Documents (Including Testimony from Phase 1)

Except as set forth in the excerpts of deposition and on the exhibit list, the parties do not anticipate using any further discovery documents except for impeachment. Plaintiff reserves the right to use the trial testimony of Wayne

Joyner and Jen Smith and the deposition testimony of Justin Joyner and Jen Smith if they cannot be produced for trial.

In exchange for a mutual promise to produce Wayne Joyner and Larry Heath for all phases of trial, the parties shall use their respective depositions for impeachment and not in their cases in chief. Should the parties fail to appear, the opposing party may introduce evidence through depositions or prior trial testimony of the non-appearing party.

X. Estimate of Trial Time

Plaintiff bears the burden of proof as to liability for breach of contract.

1. Plaintiff estimates 2 trial days for its case-in-chief.
2. Defendant estimates 1 trial day for their case-in-chief.

XI. Supersession.

This Order supersedes the pleadings in this matter.

Dated: 4/24/17


UNITED STATES DISTRICT JUDGE

Approved as to form and content:

/s/John C. Breslo

/s/Janna Wittenberg
Attorneys for Plaintiffs

/s/ Mark D. Parker
Attorney for Defendant

PLAINTIFF'S EXHIBITS - WILL
OFFER

Case Name:
Case Number:

Flagstone v. Joyner, et al.
CV-08-100-BLG-RFC

Exhibit #	Description	Bates #	Def. Objection	Date Offered	Date Reserved	Date Admitted	Date Refused/ Withdrawn
1	Flagstone/RMT Contract dated 5/25/07	AC&B 5196- 5209					
2	Notice of Termination of Contract for Default dated 4/3/08	RMT 2981- 2982					
3	Email from Joyner to Heath dated 8/24/7	RMT 0071					
4	Email from J.Joyner to Heath dated 8/26/07	RMT 0078					
5	Email from Heath to J.Joyner dated 8/26/07	RMT 0082					
6	Email from Joyner to Heath dated 8/27/07	RMT 0279					
7	Email from Heath to Joyner dated 9/4/07	RMT 0379					
8	Email from Heath to Joyner dated 9/21/07	RMT 0555					
9	Email from Heath to Joyner dated 10/2/07	RMT 0596					
10	Email from Joyner to Heath dated 10/8/07	RMT 0871					
12	Email from Joyner to King dated 4/7/08	RMT 0944					
13	Email from King to Joyner dated 3/25/8	RMT 0986					
14	Email from Marchwick to J. Joyner dated 3/8/08	RMT 0994					
16	Email from Marchwick to Griffith, et al dated 3/12/08	RMT 0998					
18	Email from Marchwick to Griffith, et al. dated 1/31/08	RMT 1057					
19	Email from J. Joyner to King, et al dated 1/15/08	RMT 1075					
20	Email from Marchwick to Joyners dated 1/15/08	RMT 1082					
21	Email from W. Joyner to J. Joyner, et al.	RMT 1092					

	dated 1/14/08						
23	Email from W. Joyner to Griffith et al dated 12/11/07	RMT 1112					
24	Email from W. Joyner to Griffith, et al. dated 12/6/07	RMT 1117					
25	Email from Marchwick to Joyner, et al dated 12/3/07	RMT 1130					
26	Email from Cossitt to W. Joyner, et al dated 11/28/07	RMT 1139					
27	Email from W. Joyner to Cossitt, et al. dated 11/27/07	RMT 1140					
28	Email from Joyner to King dated 5/21/07	RMT 1345					
29	Email from Joyner to Thurston dated 1/15/08	RMT 1085					
30	Email from Smith to Joyner dated 3/20/08	RMT 1937					
31	Email from Joyner to Tollefson dated 10/15/07	RMT 2245					
32	Email from Joyner to Berry dated 10/23/07	RMT 2248					
33	Email from Joyner to Marchwick dated 10/24/07	RMT 2251					
34	Email from Joyner to King dated 11/30/07	RMT 2295					
35	Email from Joyner to King dated 11/27/07	RMT 2297					
40	Email from J. Joyner to Spray dated 1/15/08	RMT 2481					
42	Email from J. Joyner to O'Neil dated 1/8/08	RMT 2492					
43	Email from J. Joyner to Griffith, et al dated 12/11/08	RMT 3347					
44	Letter from Marchwick to Mang dated 12/19/07	RMT 3678					
45	Email from J. Joyner to W. Joyner dated 2/9/09	RMT 4986					
46	Email from J. Joyner to King dated	RMT 5104					

	11/10/08						
47	Email from W. Joyner to Heath dated 9/20/07	AC&B 1780					
48	Email String from W.Joyner to Heath dated 9/20/07	AC&B 1825					
49	Email from W. Joyner to Heath dated 9/20/07	AG&B 1828					
50	Email from Joyner to Heath dated 9/22/07	AC&B 1923					
51	Email from W. Joyner to Heath dated 9/23/07	AC&B 1925					
52	Email from Joyner to Heath dated 9/23/07	AC&B 1938					
53	Email from Joyner to Heath dated 10/01/07	AC&B 2077					
54	Email from Joyner to Heath dated 10/01/07	AC&B 2079					
55	Email from Heath to Joyner dated 10/01/07	AC&B 2081					
56	Email from Joyner to Heath dated 10/3/07	AC&B 2124					
57	Email from Joyner to Heath dated 10/08/07	AC&B 2230					
58	Email from Heath to King dated 12/11/07	AC&B 3567					
60	Powers Buy/Sell (Executed)	RMT 1929-1934					
64	Email from Heath to Tollefson dated 4/2/08	AC&B 4683					
65	Email from Marchwick to Heath dated 4/7/08	AC&B 4740					
66	Email from Marchwick to Heath dated 4/8/08	AC&B 4794					
69	Email from J. Joyner to King et al dated 3/24/08	RMT 1898					
70	Cash Flow Model 30 Mile Ranch	0024-0027	Foundation				
72	Email from Heath to Smith dated 12/14/07	AC&B 3608					
73	Email from Joyner to Smith dated 2/12/08	AC&B 8764-8765					
74	Email from Smith to Joyner dated 3/31/08	AC&B 8854					

75	Powers Buy Sell Agreement	AC&B 9040-9314					
76	Indemnity Agreement	AC&B 9313-9314					
77	Email String from Jen Smith dated 4/4/08	AC&B 12954-12961					
81	Email from Smith to Korell dated 4/3/08	AC&B 8549					
83	Email from Marchwick to Heath dated 1/9/08	AC&B 3762					
84	Email from Joyner to Heath dated 9/2007	AC&B 1807	Objection 801				
85	Email from Heath to Joyner dated 2/9/08	AC&B 4077					
88	CAD Maps and Boards	3131A 3135D 3038A 3053A 3059A					
90	Email from Darwin to Puccio dated 1/9/08	AC&B 3761					
92	Email from King to Heath dated 12/11/2007	AC&B 3566	Objection 801				
101	Email from Heath to Joyner dated 8/26/07	AC&B 898	Objection 801				
102	Email from Tollefson to Heath dated 9/1/07	AC&B 1086	Objection 801				
106	Email from Heath to Joyner dated 9/8/07	2331A					
110	Emails beginning January 21, 2008						
111	Email From Wayne Joyner to Jeff King dated October 3, 2007	RMT 2242	No objection				
114	Email from Wayne Joyner to Jeff King dated June 25, 2007	RMT 2207	No objection				
115	Email from Wayne Joyner to Jeff King dated May 21, 2007	RMT 1345	No objection				
116	Email from Justin Joyner to Jeff King dated November 10, 2008	RMT 5104	No objection				
117	Email from Justin Joyner to Jeff King dated November 10,	RMT 5106	No objection				

	2008						
118	Email from Wayne Joyner to Jim Thurston dated January 15, 2008	AC&B 11994	No objection				
119	Email string to/from Wayne Joyner and Jeff King dated April 7, 2008	AC&B 11964	No objection				
120	Email string to/from Wayne Joyner and Jeff King dated April 9, 2008	AC&B 11958	No objection				
121	Email from Jeff King to Justin Joyner dated March 14, 2008	AC&B 11954	No objection				
122	Email string to/from Wayne Joyner and Jeff King dated March 10, 2008	AC&B 11953	No objection				
123	Email string to/from Wayne Joyner and Jeff King dated June 21, 2007	AC&B 11912	No objection				
124	Email from Larry Heath to Jeff King dated December 6, 2007	AC&B 11982	No objection				
125	Email string to/from Alanah Griffith and Wayne and Justin Joyner dated November 2, 2007	AC&B 11885-86	Objection 801				
127	Email string to/from Wayne Joyner and Jeff King dated May 31, 2007	AC&B 11881	No objection				
128	Email from Wayne Joyner to Jeff King dated May 23, 2007	AC&B 11867	Objection parol evidence rule				
129	Email from Larry Heath to Jeff King dated January 4, 2008	AC&B 11817	No objection				
132	Email from Larry Heath to Wayne M dated March 28, 2008		Objection 801				
133	Email from Larry Heath to Jen Smith dated April 4, 2008		Objection 801				
134	Email string to/from Larry Heath and		Objection 801				

	Wayne Marchwick dated April 7, 2008						
136	30 Mile Investment Prospectus	AC&B 5914- 5934	Objection 401, 801				
137	Email from Heath to Joyner dated October 2, 2007	AC&B 2086	Objection 401, 801				
138	Email from Larry Heath to Jen Smith dated April 7, 2008	AC&B 4727	Objection 801				
139	Email from Heath to Joyner dated August 24, 2007	RMT 0071	No objection				
140	Email String to/from Heath and Wayne and Justin Joyner datd August 25, 2007	RMT 0075-79	No objection				
142	Email from Heath to Joyner dated August 26, 2007	RMT 0082	No objection				

PLAINTIFF'S WITNESS LIST -
WILL
CALL

Case Name:
Case
Number:

Flagstone v. Joyner, et al.
CV-08-100-BLG-RFC

Number	Name	City & State	Manner of Presentation	Expert? Rep. Date	Depo. Excerpt/ Summary	Objections
1	Wayne Joyner	Bozeman, MT	In Person			
2	Larry Heath	Billings, MT	In Person			
3	Justin Joyner	Bozeman, MT	In Person			
4	Rick Sidwell	Billings, MT	In Person			
5	Jennifer Smith	Billings, MT	In person; unless unavailable then by video deposition as follows		<p><u>P:L - P:L</u> 9:12-9:18 10:24-11:8 21:2-21:4 78-11-91:22 92:16-94:12 96:4-100:6</p> <p>112:4-114:4 114:12-117:14 118:17-119:6 125:2-129:6 129:23-131:6 133:20-134:12 137:10-137:23</p> <p>153:25-158:7 159:14-160:21</p> <p>170:1-171:6</p> <p>172:19-173:20 174:21-175:2</p>	<p>(112-137): Relevance; constitutes mention of Insurance</p> <p>Hearsay; speculative</p> <p>Prejudicial and confusing</p> <p>Relevance</p>

DEFENDANTS' EXHIBIT LIST – WILL OFFER (except where indicated)

Case Name: *Flagstone Development, LLC v. Joyner, et al.*

Case No.: CV 08-100-BLG-SEH

No.	Description	Plaintiff's Objection	Date Offered	Date Admitted	Date Refused	Date Reserved
501	E-mail from Jeff King to Larry Heath, dated May 31, 2007					
502	E-mail from Jeff King to Larry Heath, dated August 27, 2007					
503	E-mail from Jeff King to Larry Heath, dated October 16, 2007					
504	E-mail from Larry Heath to Jennifer Smith, dated April 4, 2008					
505	E-mail from Larry Heath to Wayne M., dated March 3, 2008					
506	E-mail from Larry Heath to Bryan Hall, dated April 2, 2008	Ev. Rule 408/ Relevance				
507	E-mail from Lee Hanley to Larry Heath, dated March 31, 2008	Ev. Rule 408/ Relevance				
508	E-mail from William Cleverly to Larry Heath, dated April 1, 2008	Ev. Rule 408/ Relevance				
509	Correspondence from Gregory McGill, dated January 31, 2008					
510	Article, '30-Mile' subdivision to impact Shepherd School					

Flagstone Development, LLC v. Joyner, et al.

Defendants' Exhibit List - Will Offer

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DEFENDANTS' EXHIBIT LIST – WILL OFFER (except where indicated)

Case Name: *Flagstone Development, LLC v. Joyner, et al.*

Case No.: CV 08-100-BLG-SEH

No.	Description	Plaintiff's Objection	Date Offered	Date Admitted	Date Refused	Date Reserved
511	Correspondence from Alanah Griffith to Gregory McGill, dated April 3, 2008					
512	Settlement Statement					
513	30 Mile Ranch Investment Prospectus (offered for a limited purpose)					
514	E-mail from Wayne M. to Larry Heath, dated February 15, 2008					
516	Correspondence from Gregory McGill to Alanah Griffith, dated February 23, 2009	Ev. Rule 408/ Relevance				
517	E-mail from Larry Heath to Jennifer Smith, dated April 4, 2008					
518	E-mail from Larry Heath to Greg McGill, dated January 22, 2008					
519	E-mail from Larry Heath to Jeff King, dated February 13, 2008	Ev. Rule 408/ Relevance				

Flagstone Development, LLC v. Joyner, et al.

Defendants' Exhibit List - Will Offer

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DEFENDANTS' EXHIBIT LIST – WILL OFFER (except where indicated)

Case Name: *Flagstone Development, LLC v. Joyner, et al.*

Case No.: CV 08-100-BLG-SEH

No.	Description	Plaintiff's Objection	Date Offered	Date Admitted	Date Refused	Date Reserved
520	E-mail from Wayne M. to Larry Heath, dated March 9, 2008					
521	E-mail from Wayne M. to Larry Heath, dated March 3, 2008	Hearsay				
522	E-mail from Larry Heath to Wayne Joyner, dated August 28, 2007					
523	E-mail from Larry Heath to Sidwell Land, dated October 29, 2007					
524	E-mail from Hans Stoll to Larry Heath, dated November 6, 2007					
525	E-mail from Larry Heath					
526	E-mail from Wayne M. to Larry Heath, dated March 3, 2008	Hearsay				
527	E-mail from Wayne M. to Larry Heath, dated March 28, 2008	Hearsay				
528	E-mail from Wayne M. to Larry Heath, dated April 7, 2008	Hearsay				

Flagstone Development, LLC v. Joyner, et al.

Defendants' Exhibit List - Will Offer

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DEFENDANTS' WITNESS LIST – WILL CALL

Case Name: *Flagstone Development, LLC v. Joyner, et al.*

Case No.: CV 08-100-BLG-SEH

No.	Description	City/State	Manner of Presentation	Expert?/ Report Date	Excerpts	Objections
1	Wayne Joyner	Bozeman, MT	in person	no	none	
2	Justin Joyner	Bozeman, MT	in person	no	none	
3						

Flagstone Development, LLC v. Justin Joyner, et al.

Defendants' Witness List - Will Call

Page 1 of 1

DEFENDANTS' WITNESS LIST – MAY CALL

Case Name: *Flagstone Development, LLC v. Joyner, et al.*

Case No.: CV 08-100-BLG-SEH

No.	Description	City/State	Manner of Presentation	Expert?/ Report Date	Excerpts	Objections
1	Jake Korell	Billings, MT	in person	no	none	
2	Jon Ussin	Billings, MT	in person	no	none	
3	Jeff King	Williamstown, MA		no	none	
4	Jennifer Smith	Billings, MT	in person	no	none	

Flagstone Development, LLC v. Justin Joyner, et al.

Defendants' Witness List - May Call

Page 1 of 1